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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/038,008	01/04/2002	Mark Linus Bauman	ROC920010193US2	6602
7590	10/19/2005		EXAMINER	
Gero G. McClellan Moser, Patterson & Sheridan, L.L.P. Suite 1500 3040 Post Oak Boulevard Houston, TX 77056-6582			AVELLINO, JOSEPH E	
			ART UNIT	PAPER NUMBER
			2143	
DATE MAILED: 10/19/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/038,008

Applicant(s)

BAUMAN ET AL.

Examiner

Joseph E. Avellino

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-29 are pending in this examination; claims 1, 9, and 20 independent.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-34 of application no. 10/037,595 contains every element of claims 1-30 and as such anticipates claims 1-30 of the instant application.

4. "A later patent claim is not patentably distinct from an earlier patent claim if the later claim is obvious over, or **anticipated by**, the earlier claim. In re Longi, 759 F.2d at 896, 225 USPQ at 651 (affirming a holding of obviousness-type double patenting because the claims at issue were obvious over claims in four prior art patents); In re Berg, 140 F.3d at 1437, 46 USPQ2d at 1233 (Fed. Cir. 1998) (affirming a holding of obviousness-type double patenting where a patent application claim to a genus is anticipated by a patent claim to a species within that genus)." ELI LILLY AND

COMPANY v BARR LABORATORIES, INC., United States Court of Appeals for the Federal Court, ON PETITION FOR REHEARING EN BANC (DECIDED: May 30, 2001).

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-7, 9-11, 13-18, 20-22, 24-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nair (US 2003/0217184) in view of Beighe (USPN 6,055,576).

5. Referring to claim 1, Nair discloses a method of processing messages, comprising:

receiving at a driver configured for a server application executing on a computer data from a remote source via a network connection prior to allocating a buffer to contain the data (p. 3, ¶ 23); and subsequently

allocating the buffer to contain the data (p. 3, ¶ 25).

Nair does not specifically state using a networked based socket receiving data and then allocating the buffer to contain the data. However Beighe teaches that TCP is a well known protocol that implements networked based sockets in order to allow a server application to communication with a client application (col. 2, lines 46-62) as well as a socket receiving data and then stored in a buffer. In analogous art, Beighe teaches receiving data at a socket and then allocating the buffer (col. 3, lines 42-55). It would

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have been obvious to one of ordinary skill in the art to combine the teaching of Beighe with Nair in order to provide intelligent packet processing to the system of Nair as supported by Beighe (col. 3, line 58 to col. 4, line 5).

6. Referring to claim 2, Nair discloses the messages are client-server messages (it is inherent that the messages are client server messages since any sender is considered a server and any recipient is considered a client).

7. Referring to claim 3, Nair discloses the data is received over a sockets streaming protocol (i.e. receiving packets continuously) (p. 3, ¶ 23).

8. Referring to claim 4, Nair discloses allocating the buffer comprises sizing the buffer according to a size of the data (i.e. identifies a buffer of appropriate size in which to store the frame of data) (p. 3, ¶ 25).

9. Referring to claim 5, Nair discloses the allocating is performed in response to a buffer request from the sockets layer (p. 3, ¶ 25).

10. Referring to claim 6, Nair discloses the network connection is a TCP/IP connection (i.e. Ethernet port) (p. 3, ¶ 23).

11. Referring to claim 7, Beighe discloses processing a buffer request from a sockets layer after receiving the data (col. 3, lines 40-60); and

providing the buffer to the sockets layer (col. 3, lines 40-60).

12. Referring to claim 8, Nair discloses the invention substantively as described in claim 7, however does not specifically state the buffer request specifies a size of the buffer equal to a size of the data, however it is well known that memory requests can include a size of memory which is needed to store the data. By this rationale, "Official Notice" is taken that both the concept and advantages of providing for specifying a size of the data in the buffer request is well known and expected in the art. It would have been obvious to one of ordinary skill in the art to modify the teaching of Nair to include specifying a size of the data in the buffer request since Nair discloses that the buffer manager identifies a buffer of appropriate size, however does not disclose how it knows this information. This would lead one of ordinary skill in the art to search for methods as to how to request data buffers, eventually finding the well known method of requesting a specific sized data buffer.

13. Claims 9-11, 13-18, 20-22, and 24-30 are rejected for similar reasons as stated above. Furthermore Nair discloses the allocation is performed by the sockets layer (p. 3, ¶ 25), and calling back to the sockets server application with an instruction to allocate the buffer (p. 3, ¶ 23-25). Beighe further discloses the buffer is allocated from storage

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owned by the sockets server application based on a value of the buffer mode parameter (i.e. direction) (col. 3, lines 10-50),

Claims 12 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nair in view of Beighe in view of Glasser et al. (USPN 5,764,890) (hereinafter Glasser).

14. Referring to claim 12, Nair in view of Beighe discloses the invention substantively as described in claim 9. Nair in view of Beighe does not specifically state that the input operation is configured with a record definition specifying a data format of the data. In analogous art, Glasser discloses another method of processing messages wherein the input operation is configured with a record definition specifying a data format of the data (col. 12, line 60 to col. 13, line 9). It would be obvious to a person of ordinary skill in the art at the time the invention was made to combine the teaching of Glasser with Nair and Beighe since Nair discloses the packet is received and a buffer of appropriate size is identified (p. 3, ¶ 25), however does not specify what size the Ethernet packet is. This would lead to one of ordinary skill in the art to determine negotiation handshaking methods thereby finding Glasser and its efficient method of negotiating the maximum size of data packets (col. 12, lines 60-65).

15. Claim 23 is rejected for similar reasons as stated above.

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16. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nair in view of Beighe in view of Fry et al. (USPN 4,467,411) (hereinafter Fry).

17. Referring to claim 19, Nair in view of Beighe discloses the invention substantively as described in claim 9. Nair furthermore discloses receiving the data via the network connection and copying the data into a previously allocated buffer (i.e. protocol software module receiving a frame of data) provided to the sockets layer with the input operation (p. 3, ¶ 23). Nair in view of Beighe does not disclose if the previously allocated buffer is not large enough to contain the data, requesting a large buffer sufficient to contain the data. Fry discloses another message processing system which if the previously allocated buffer is not large enough to contain the data, requesting a large buffer sufficient to contain the data (col. 22, lines 42-47). It would be obvious to a person of ordinary skill in the art at the time the invention was made to combine the teaching of Fry with Nair and Beighe in order to provide improved asynchronous signal transfers between a buffer and a plurality of signal handling devices by allowing scheduling of signal-handling device operations with respect to a managed buffer as supported by Fry (col. 3, lines 19-29).

Response to Arguments

18. Applicant's arguments with respect to claims 1-30 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Again, it is the Examiner's position that Applicant has not yet submitted claims drawn to limitations, which define the operation and apparatus of Applicant's disclosed invention in manner, which distinguishes over the prior art. As it is Applicant's right to continue to claim as broadly as possible their invention. It is also the Examiner's right to continue to interpret the claim language as broadly as possible. It is the Examiner's position that the detailed functionality that allows for Applicant's invention to overcome the prior art used in the rejection, fails to differentiate in detail how these features are unique. As it is extremely well known in the networking art as already shown by Nair and other prior arts of records disclosed, for a method of processing messages as well as other claimed features of Applicant's invention. Thus, it is clear that Applicant must submit amendments to the claims in order to distinguish over the prior art use in the rejection that discloses different features of Applicant's claim invention.

Applicant has failed to seasonably challenge the Examiner's assertions of well known subject matter in the previous Office action(s) pursuant to the requirements set forth under MPEP §2144.03. A "seasonable challenge" is an explicit demand for evidence set forth by Applicant in the next response. Accordingly, the claim limitations the Examiner considered as "well known" in the first Office action are now established as admitted prior art of record for the course of the prosecution. See *In re Chevenard*, 139 F.2d 71, 60 USPQ 239 (CCPA 1943).

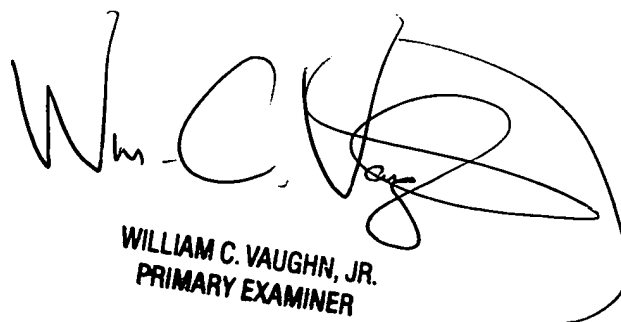
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph E. Avellino whose telephone number is (571) 272-3905. The examiner can normally be reached on Monday-Friday 7:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Wiley can be reached on (571) 272-3923. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



JEA
September 30, 2005



WILLIAM C. VAUGHN, JR.
PRIMARY EXAMINER